

Compensation for Sexual Abuse

PEOPIL Annual Conference 2023

Dublin, 29 September 2023

HUGH | JAMES

Understanding law, understanding you

Panellists



Alan Collins

Hugh James Solicitors, England/Wales



Peter de Maeyer

HBSV Advocaten, Belgium



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Trinity College Dublin, Ireland

The cost of CSA

- **Human lives**
- **Economic cost –**
 - 2% GDP Western Europe
 - £89,000 per child (UK Gov)



How widespread is CSA?

- 7.5% of the adult population – UK gov.
- 1 in 10 girls – UN
- 1 in 3 women will have experienced physical and/or sexual violence (WHO)
- Behind the statistics there are survivors/victims





THE RIGHT TO JUSTICE

Justice can mean
different things

European Convention on the Compensation of Victims of Violent Crimes

- When compensation is not fully available from other sources the State shall contribute to compensate: ...those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence – Article 2
- So who pays?
 - The offender?
 - Insurers?
 - Government – the taxpayer?

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power



**UN General Assembly
resolution 40/34**



Access to justice



Restitution



Compensation

The complex reality faced by victims

- **A complex legal system**
 - Limitation laws
 - Employers' liability
 - Is there insurance?
- **Is there a case to pursue?**
- **Redress schemes**
- **Government criminal injuries schemes**



Time for radical reform?

- No fault compensation schemes
- National schemes eg Australia (Royal Commission)
 - But who pays...?
 - Should not the convicted abuser pay?
- Model Litigant Guidelines
- Secondary victims?



Trinity College Dublin
Coláiste na Tríonóide, Baile Átha Cliath
The University of Dublin

Compensation for Sexual Abuse

Introduction & Local Context – A Medical Perspective

Pan European Organisation of Personal Injury Lawyers Annual Conference

Friday 29th September 2023

Law Society of Ireland

Professor Damian Mohan FRCPsych
Associate Professor in Forensic Psychiatry TCD

What will I cover?

- Introduction & Context
- Where & When?
- The Perpetrator
- Disclosure
- Victim : Damage & Betrayal
- Sex abuse Litigation in Ireland
- Compensation
- Future scenarios



Where & When – High Risk Environments

- State Childcare System
- Catholic Church Sexual Abuse in Ireland
- Abuse in Schools by Teachers
- Abuse in Scouts
- Abuse in Sport
- Abuse in Army
- Abuse in Hospital & Health Care Settings
- Entertainment Industry e.g. Glitter/Harris/Saville
- Intrafamilial CSA
- Online facilitated Child Sexual Abuse (CSA)

State Childcare System

- **1996 - 'Dear Daughter' - Louis Lenton**

- brought the abuse suffered by Christine Buckley and others at the Goldenbridge orphanage in Dublin to public attention when it was first broadcast in 1996

- **1999 - 'States of Fear' - Dr Mary Rafferty**

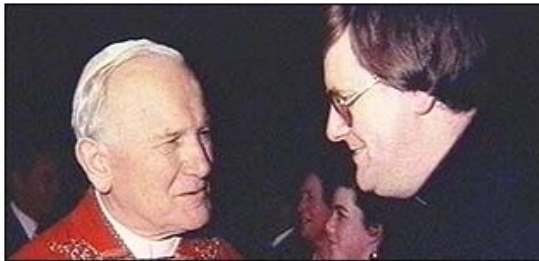
- a documentary film series which detailed abuse suffered by Irish children between the 1930s and 1970s in the state childcare system, primarily in the Reformatory and Industrial Schools



CORRESPONDENT

Wednesday, 29 January, 2003, 13:32 GMT

Suing the Pope - Colm's story



Fr Fortune disguised his intent from all around him

By Sarah Macdonald
Reporting for Correspondent



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EDITIONS

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The Catholic Church went into turmoil after Colm O'Gorman revealed, in a Correspondent film, how he had been raped by a Catholic priest at the age of 14.

Sarah Macdonald has returned to Ireland to update what has happened since.

The investigation focused on Colm O'Gorman's torment after being sexually abused by Fr Sean Fortune, the parish priest in County Wexford.

Fr Fortune assaulted and raped Colm O'Gorman over two-and-a-half years.

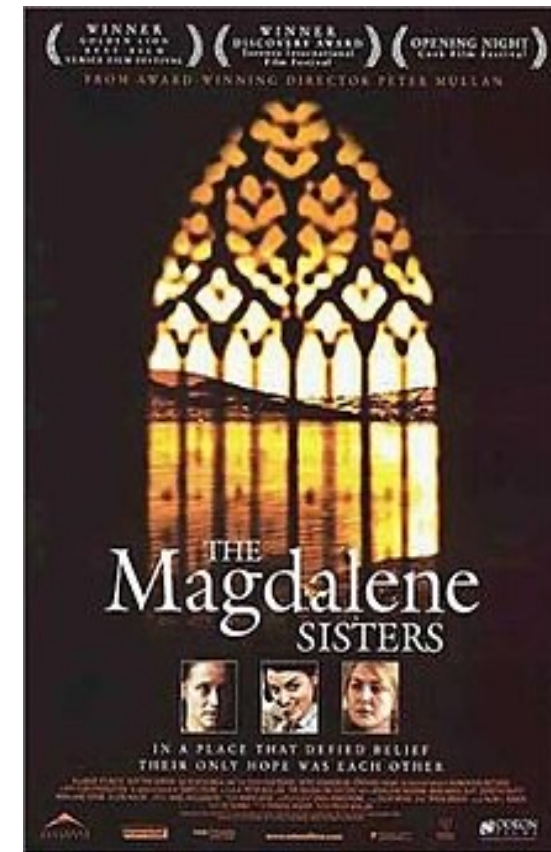


Bishop Comiskey did not survive the uproar

Dr Comiskey, Bishop of Ferns, admitted knowing there were allegations of child abuse surrounding a number of priests in his diocese when he was first appointed in 1984.

Catholic Church Sexual Abuse in Ireland

- Late 1980's – sporadic reports
- Early 1990's – series of Criminal cases
- ***Suing the Pope*** (March 2002) documentary by Colm O Gorman and the BBC detailed the abusive activities of priest Sean Fortune and the response of the Diocese of Ferns
- ***The Magdalene Sisters*** (2002) is a film about three teenage girls who were sent to the 'Magdalene Laundries' homes for women who were labelled as “fallen” The homes were maintained by religious orders in RC Catholic Church
- 6 priests convicted between 1975 and 2011



The Night Sinead O'Connor Took on the Pope on 'S.N.L.'

Tearing up a photo was the moment nobody forgot. The performance that preceded it was just as powerful.

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Sinead O'Connor and the moment that changed her career. NBC

By [Jon Caramanica](#)

Published July 26, 2023 Updated Aug. 1, 2023



News > World News

PAEDOS IN ROBES Revealed – the depressing history of Catholic Church sex scandals

Allegations have been levelled across the world with the Vatican saying at least 3,400 credible cases were referred to it between 2004 and 2014

[Guy Birchall](#)

Published: 18:34, 12 Jul 2017 | Updated: 18:44, 12 Jul 2017

Predators are Deceptive & Alluring

- Chose an arena in which they are unlikely to be a suspect
- They construct a life and lead a double life in which they present as nice people, who are kind and considerate
- They do good deeds, reflecting care and concern and the qualities that are considered valuable in a priest or teacher
- Say the right things and have an appearance of piety
- Being a '*pillar of the community*' is one of the ways that he gains parents' trust and access to their children and seduce them unsuspectingly into sexual behaviour
- We all know of situations where people in the community cannot believe that a particular scoutmaster, teacher or cleric could possibly have done this to a child.

Risk Factors & Behaviour Characteristics:

• Perpetrators

- Males working in isolation
- Exploit power differential & social status
- Purposeful planning
- Grooming –
 - refers to the process of establishing/building a relationship with a child either in person or using the Internet or other digital technologies to facilitate either online or offline sexual contact with that person
- Continuum of oppression

• Characteristics and Vulnerabilities of the Victim/Survivor

- Vulnerable
- History of maltreatment
- Parental conflict
- Learning disability
- Social isolation
- Early use of alcohol & Drugs
- Lack of awareness
- Away from Home

Disclosure:

- Children are often afraid to disclose
- Children today with greater education & awareness are more likely to disclose than children in the past
- Those who do disclose often wait months or years before telling somebody and they feel that
 - They won't be believed
 - It will bring trouble to their families
 - They are afraid that they or somebody else will be harmed if they tell
 - What is happening is their fault
 - They may feel ashamed or feel stigmatized
 - Boys worry about their sexuality
- People who abuse children are manipulative and manipulate children into maintaining the secrecy of the abuse.

Impacts on victims and survivors

The evidence suggests that victims and survivors are at ***increased risk of adverse*** outcomes in the following areas:

Physical health

Emotional wellbeing and mental health

Externalising behaviours

Interpersonal relationships

Socio-economic outcomes

Religious and spiritual belief

Vulnerability to revictimisation

Victim: Psychobiological Consequences of Childhood Sexual Abuse

Lacono et al Frontiers. 02 Décembre 2021 Sec. Neuroendocrine Science Volume 15 - 2021

| <https://doi.org/10.3389/fnins.2021.771511>

- Biological Impact of CSA on Endocrine & Immune Systems
 - Dysregulation of the Hypothalamic Pituitary Adrenal Axis(HPA)
 - Effects on Immune System
 - Changes in DNA
 - Intergenerational transmission of the effects on DNA

Civil Courts in Ireland



Plaintiff v Defendant



Defendant: a company, or institution sued or accused in a court of law



STATUTE OF LIMITATIONS (AMENDMENT) ACT, 2000

AN ACT TO PROVIDE THAT CERTAIN PERSONS SHALL BE UNDER A DISABILITY FOR THE PURPOSE OF BRINGING ACTIONS RELATING TO ACTS OF SEXUAL ABUSE COMMITTED AGAINST THEM PRIOR TO THEIR REACHING FULL AGE, FOR THAT PURPOSE TO AMEND THE STATUTE OF LIMITATIONS, 1957, AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

[21st June, 2000]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Short title, construction and collective citation.

1.—(1) This Act may be cited as the Statute of Limitations (Amendment) Act, 2000.

(2) The Statutes of Limitation, 1957 and 1991, and this Act may be cited as the Statutes of Limitations and shall be construed together as one Act.

Amendment of Statute of Limitations, 1957.

2.—The [Statute of Limitations, 1957](#), is hereby amended by the insertion of the following section after section 48:

“Disability of certain persons for purpose of bringing certain actions arising out of acts of sexual abuse.

48A.—(1) A person shall, for the purpose of bringing an action—

(a) founded on tort in respect of an act of sexual abuse committed against him or her at a time when he or she had not yet reached full age, or

(b) against a person (other than the person who committed that act), claiming damages for negligence or breach of duty where the damages claimed consist of or include damages in respect of personal injuries caused by such act,

be under a disability while he or she is suffering from any psychological injury that—

(i) is caused, in whole or in part, by that act, or any other act, of the person who committed the first, mentioned act, and

(ii) is of such significance that his or her will, or his or her ability to make a reasoned decision, to bring such action is substantially impaired.

Psychiatric Evaluation – confounding variables which predate the CSA

- Characteristics and Vulnerabilities of the Victim/Survivor
 - Vulnerable
 - History of maltreatment
 - Parental conflict
 - Learning disability
 - Social isolation
 - Early use of alcohol & Drugs
 - Lack of awareness/education

What is Compensation for Sexual Abuse?

- **Compensation: Legal Model**

- ‘something, **typically money**, awarded to someone in recognition of loss, suffering, or injury’.

- **Compensation: Psychological Model**

- Tell my story
- Rape Victim Anonymity
- Therapeutic support

- **Future Scenarios:**

- Victim Led – Non-Statutory Inquiry
- Therapeutic Jurisprudence Model

And finally, to summarise.....

Where & When?

The Perpetrator

Disclosure

Victim : Damage & Betrayal

Sex abuse Litigation in Ireland

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Thank You

Help and assistance for victims



The Belgian Sexual Assault Care Centres

- A multidisciplinary collaboration between a partnership between a hospital, the police and the public prosecutor
- Currently 9 centres
- Victims receive
 - Medical and psychological assistance
 - Forensic investigation
 - Information about making a formal complaint

The Belgian Sexual Assault Care Centres

ACUTE CARE

- Forensic nurse
- First psychological aid
- Medical care
- Forensic examination (< 1 week) on the basis of forensic roadmap
- Possibility of interrogation by a vice inspector

AFTERCARE

- Coordinated by the forensic nurse
- In collaboration with existing services for medical, psychological and legal assistance (referral)
- Psychological support by trauma psychologist

Centre General Welfare: Victim support

- Psychological assistance
- Information on police, justice, insurance and compensation schemes
- Staff can accompany victims to doctor, police, prosecutor or court



Our role as a
personal injury lawyer

How to react to the revelation of sexual abuse

- Be encouraging and empathetic
- Violence = unacceptable
- Trust
- Estimate the safety of the person and other family members
- If necessary, refer the victim to medical/ psychological care
- Respect own limits
- Do not make promises you cannot keep
- Don't talk about your own problems

Client-centred approach

- Always respect:
 - The client's autonomy
 - As well as the right to make their own decisions
 - Confidentiality and dignity, taking into account cultural and social norms
- Judge not
- Be empathic and respectful
- Explain step by step what you are going to do
- Do not stand behind your client before there is trust
- Hold the door sideways
- Do not only focus on monetary compensation

Compensation

- 'Indicative Tabel'
- Civil compensation in criminal procedure
- Also compensation for indirect victims

PTSD

- *“A wide range of psychological, emotional, physical and social effects has been attributed to child sexual abuse, including anxiety, depression, obsession, compulsion, grief, post-traumatic stress disorder (PTSD) symptoms such as flashbacks, emotional numbing, pseudomaturity symptoms, and other more general dysfunctions, such as sexual dysfunction, social dysfunction, dysfunction of relationships, poor education and employment records, eating disorders, self-mutilation and a range of physical symptoms common to some other forms of PTSD (Molnar et al., 2011; Cummings and Donoghue, 2018)”.*
(Helen GAVIN, *Criminological & Forensic Psychology*, 2nd edition, London, Sage Publications, 2019, p 177.)
- Medical reserve